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Remarks

All pending claims (1-29, properly numbered) have been rejected under 35 U.S.C. §103 as being unpatentable over Kamieniecki, USPN 7,162,733 in view of Hayes, USPP 2006/0259184. The rejections allege that the primary reference, col. 5, lines 1-11, col. 5, line 56-col. 6, line 11, and col. 7, lines 59-62 teaches that a component, alleged to have a primary communication system configured with a primary communication system of a server, sends information to the server using a secondary communication system that is out of band with the primary system, admitting that Kamieniecki fails to teach sending configuration information and relaying on Hayes, paragraphs 24 and 45 for the shortfall.

The rejections are traversed for being based on clearly erroneous findings of fact regarding the teachings of the applied references.

Actual Teachings of Relied-Upon Parts of Kamieniecki

Commencing with an analysis of Kamieniecki:

Col. 5, lines 1-11 teach that

"Headend 135 is coupled to automatic set-up device 100 through the cable plant 132, as indicated by lines 116 and 118. Headend 135 is typically arranged to receive television, video, audio and data content from remote service providers (not shown in FIG. 1) and transmits such received signals to set-top terminals distributed along points in the network 130. As described in more detail in the text accompanying FIGS. 2 and 3 below, automatic set-up device 100 is combined with set-top terminal functionality that enables the arrangement to receive and use signals received from network 130."

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Accordingly, this portion of Kamieniccki simply teaches, in relevant part, that a headend communicates with a device 100 through a cable plant, apparently using one and only one communication system to do so.

Col. 5, line 56-col. 6, line 11 of Kamieniecki teaches only that

"A variety of remote electronic devices are depicted in the illustrative embodiment of FIG. 1, and may include the typical components of a home entertainment system that may be manufactured by different companies. These are shown in FIG. 1 as television 150, VCR 156, DVD player 162, stereo/home theater controller 168, CD player 174, laser disc player 176, CATV set-top terminal (i.e., "cable box") 178, and satellite television receiver 182. Other electronic devices and home entertainment components may also be advantageously used with the invention. Such devices are collectively depicted in FIG. 1 by the functional block identified by reference numeral 188. Electronic devices 107 may be operably coupled via hardwire connections or a communications bus (not shown). Electronic devices, as described in the background section, are generally controllable by a matching native remote control. For the sake of clarity in FIG. 1, a single native remote control 108 is depicted for controlling television 150 via an IR control beam 109, however native remote control 108 represents the plurality of native remote controls that are used with the collection of electronic devices identified by reference numeral 107."

Thus, all this portion of the reference teaches is that remote control devices communicate with components of a home entertainment system - not the headend, and not using two or more communication systems.

Col. 7, lines 59-62 add nothing relevant:

"Alternatively, the electronic devices may be actively monitored where, for example, an IR command is periodically sent to a device and a corresponding response is detected. Failure

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to receive the expected response may be indicative of a power loss at the device. Such alternatives may be advantageously employed in instances where AC power detection at the automatic set-up device is impractical as an event trigger (for example, in large collections of electronic devices requiring the use of multiple AC circuits)."

There is no teaching here of communication between any two components using anything more than a single communication system. Accordingly, not a single one of the sections of Kamieniecki relied on for the proposition of using a secondary, out-of-band communication system between two components in fact teaches any such thing, much less in the context of Claim 1, rendering the rejections reversible error for being based on clearly erroneous findings of fact.

Likewise, the same parts of Kamieniecki have been used as teachings of the limitation in Claim 14 of "the server or the component determining a value of at least one physical parameter of a signal received from the other and affirming proper exchange of information only if the value indicates that the server and component are within an acceptably close distance of each other", but as can be plainly seen just by reading the relied-upon parts of Kamieniecki, there is absolutely nothing in the reference teaching or suggesting any decision whose outcome has to do with a distance. The comments above apply *mutatis mutandis* to Claim 18 and its dependent claims.

Actual Teachings of Relied-Upon Parts of Hayes

Paragraph 24 of Hayes says nothing about configuration information, contrary to the allegation in the Office Action. Instead, paragraph 24 teaches that:

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"Remote control 10 may also include, as needed for a particular application, CCD or other imaging sensors, microphone, and/or touchscreen display for receipt of various types of user input for effecting operations of the remote control. Remote control 10 may also be configured to include appliance, control server, and content server functions, as will be described in greater detail below. For instance, remote control 10 may be implemented on a laptop computer, smart panel, tablet PC, wireless enabled PDA, mobile phone, etc which may all include programming to cause remote control 10 to playback music, videos, pictures and the like, monitor appliance feature and state tables for advanced control functions, and include programming for location determination methods. Remote control 10 may thus be viewed as a wireless appliance having functions similar to less portable appliances of the networked control environment, and as such the following discussions and descriptions of the remote controls, and controlling devices in general, should be taken in the broadest sense possible."

In other words, paragraph 24 teaches only that a remote control can include a camera, microphone, and/or touchscreen display and may also be configured to include appliance, control server, and content server functions. By this, Hayes clarifies that the remote control may be implemented on a variety of computer devices to (1) playback content; (2) monitor tables for advanced control functions, and (3) include programming for location determination methods. But playing back content, monitoring functions, and determining a location are not the same thing as exchanging configuration information and do not necessitate or for that matter even imply such, particularly not the specific configuration information now included in Claim 1.

Paragraph 45 of Hayes is of no further help to the *prima facie* case:

"Generally, a user will initiate a save state command for a particular home entertainment center (typically a group of appliances) from which a movie, music, television broadcast, image, or other media element is being played. Any device that can transmit a unique coded signal in IR, RF or other protocol could be used to instigate the process of suspend, storing, transmitting and resuming the session state (e.g., LCD based remote, traditional tactile remote, single button remote, mobile wireless device, etc.) Both the playback state of the media, as

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well as the device configurations and settings during playback, will be saved either in a central data server (such as a media server connected to one or more devices of the home entertainment center), sent to the remote control to be saved, or a combination thereof. Once data has been saved it may be recalled at a later time in its current state to operate the devices and media of the same entertainment center from which it was saved, or it may be recalled (though the operation of devices by the data server and/or remote control) for a different home entertainment center having a set of analogous home appliances of different brand and/or model. In order to ensure that media playback and device state settings transfer correctly to the second home entertainment center devices, a set of device conversion definitions is applied to each data element from the first entertainment center (e.g., television settings data, audio receiver settings data, etc.) in order to ensure that data and commands saved from the first device(s) will translate appropriately to the analogous device(s) of the second entertainment center."

As can be seen by reading it, paragraph 45 teaches nothing about configuration information, much less communicating it across an out of band secondary system. Instead, it teaches that a user can save, by transmitting a coded signal in IR, RF or other protocol, to suspend, store, transmit, and resume a session state, meaning that both the playback state of the media, as well as the device configurations and settings during playback, can be saved for later recall. But the "device configurations" of this paragraph are not to be confused with "configuration information", because the paragraph goes on to teach that, to ensure that media playback and device state settings transfer correctly to a set of second home entertainment center devices, a set of device conversion definitions is applied to each data element from the first entertainment center (e.g., television settings data, audio receiver settings data, etc.). In other words, by "device configurations" Hayes apparently means the channel and volume that was being played, not "configuration information" as that term is understood by those of skill in the art, see MPEP §2111.01 (the examiner must interpret claims as one skilled in the art would). In any case, all of the communication between the relevant components in this

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paragraph - an entertainment system on the one hand, and the remote control on the other - are using one and only system, i.e., IR or RF or other protocol.

The allegation *apropos* Claim 2 that Kamieniecki's abstract teaches a server sending configuration information using a secondary communication system to a component is both wrong and inconsistent with the admission noted above made in relation to Claim 1. The abstract teaches automatic set-up of an electronic device having multiple user-controllable functionalities using interactive menu to select and set a functionality to a desired setting. Setting a functionality, however, is not exchanging configuration information. As taught by the abstract, functionality set up is achieved by transmitting a menu selection using an IR beam, i.e., using one and only one communication system, not two.

The allegation regarding former Claim 3 that Hayes, paragraphs 24 and 45 teach an encryption key, an address, and an ID is simply wrong, as a perusal of these paragraphs, reproduced above, conclusively demonstrates.

The allegations that various dependent claim limitations, including those of Claims 4, 6, 8, 12, and 16, are mere matters of design choice or are well-known in the art are illegitimate, being unsupported by evidence: a statement that modifications of the prior art to meet the claimed invention would have been "within the ordinary skill of the art at the time the claimed invention was made" is not sufficient to establish a *prima facie* case of obviousness without some objective reason suggested by the prior art, MPEP §2143.01, first, second, and seventh paragraphs.

To the extent that the concept of official notice is being used, MPEP §2144.03 advises that the taking of official notice can be taken only of facts that "are capable of instant and unquestionable demonstration as

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to defy dispute", giving, as examples, adjusting flame intensity as needed for heat and tape recorders automatically erasing old data when new data is recorded onto them. Official notice of dependent claim limitations "might be appropriate" but only if the facts so noticed "are of notorious character".

Accordingly, official notice "is permissible only in some circumstances", and should be "rare" in final rejections. In any case, according to the MPEP official notice is most inappropriate of technical facts in areas of esoteric technology or of specific knowledge of the prior art. Still further, "ordinarily there must be some form of evidence in the record to support an assertion of common knowledge", and "general conclusions concerning what is basic knowledge without specific factual findings will not support an obviousness rejection."

It must be noted in addition that the question is not just whether various elements are well known, but also where the prior art supplies the motivation to combine the allegedly well-known features with the rest of the claimed elements. That is, regardless of how an element is identified in the prior art, i.e., using a reference or "official notice", the remaining task for an examiner is to show why the prior art suggests the element in the combination claimed.

Additionally, the technical line of reasoning underlying the examiner's decision to take official notice without supporting evidence has not been laid out "explicitly" in the terms required by MPEP §2144.03(B).

For each and every taking of official notice, Applicant hereby requests not only a prior art showing under MPEP §2144.03(C) but also the requisite prior art suggestion to combine the allegedly well-known feature in the combination being rejected. Applicant explicitly traverses the taking of official notice for failing

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to comply with the above requirements of the MPEP, in that the officially noticed limitations are anything but "capable of instant and unquestionable demonstration of being well known".

The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

Respectfully submitted,



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